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## **SB 35 RELATING TO NATURAL RESOURCES PUBLIC TRUST**

**Statement for  
Senate Committee on  
Ecology, Environment and Recreation  
Public Hearing, 6 April 1979**

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SB 35 is intended to implement the amendment to the State Constitution that applies to the conservation and development of resources. This statement does not reflect an institutional position of the University.

The amendment in question, Section 1 of Article XI of the Constitution, contains two paragraphs. The first requires that the State conserve all natural resources and promote their development and utilization in a manner consistent with their conservation. The second states that "All public natural resources are held in trust by the State for the benefit of the people."

The term "public trust" has come into increasing use in the conservation law of mainland states. The legal implications of the use of the word "trust" in this term are not entirely clear, because the beneficiaries are not individuals or identifiable groups or institutions, but the public as a whole, which is made up of individuals with very diverse interests. It should be noted that in the constitutional amendment, the public trust doctrine is applied only to "public natural resources," not to all of the natural resources in the State.

The Act proposed in SB 35 has three sections.

The first refers to the State as the "public guardian of those valuable public natural resources which are not capable of self-regeneration and for which substitutes cannot be made by man." It identifies these resources as public land, water, air, energy sources and wild animals. However, those listed are not all incapable of self-regeneration and substitutes can be found for some.

Land is a non-renewable resource, but land itself, as distinct from some of its elements and characteristics, such as soil and terrain, is little liable to the risk of human destruction. The extent of human destruction of land is about equal to the extent of human creation of land, as by the fill of water areas, and human substitutes for land have been created in the form of fixed and floating platforms in the ocean. Water and air are essentially renewable, not non-renewable natural resources. So are wild animals except to the extent entire species may be jeopardized by human activities. Some energy resources are essentially renewable, some are essentially non-renewable.

Through regulation under present law, guardianship by the State is provided in the case of not only non-renewable but also renewable resources, and in the case of not only public resources but also those subject to private ownership or use rights. It is thus not clear what change from present policy would result from first section of the proposed Act, and in any case there are internal inconsistencies in its language.

The second section would make it a duty of the State as public trustee, to control and protect "the trust resources for the benefit of this and future generations." The "trust resources" are presumably the public resources referred to in the first section, but this is not explicit in the bill. It is not clear what powers this section would provide to the State that are not State powers now.

The third section states that the public trust can be used by the state to protect "trust property." The "trust property" is not defined, but like the "trust resources" is probably the same public resources. Although this section is titled enforcement, no enforcement powers are delegated to any executive agency, and the third section appears to be merely a restatement of the powers expressed in the second section.

It seems clear that the natural resources amendment should serve as a guideline to future legislation providing for the conservation of public natural resources, that is the balancing of their preservation and their useful development. It is not clear, however, that the amendment requires or can be implemented effectively by any single general Act such as is proposed in SB 35. In any case, SB 35 is inconsistent internally, and redundant both internally and in relation to present laws providing for the conservation of natural resources.